



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2011–0112]

[4500030114]

RIN 1018-AX69

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period; announcement of public meetings and public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), recently published a proposal to revise the designated critical habitat for the northern spotted owl (*Strix occidentalis caurina*), and announced the opening of a public comment period on the proposed revised rule through

June 6, 2012. We now extend the public comment period to July 6, 2012. We are extending the public comment period to allow all interested parties an opportunity to comment simultaneously on the proposed revised rule and the soon-to-be-released draft economic analysis and draft environmental assessment on the proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. We also announce a public hearing and public information meetings on our proposed revised rule and associated documents.

DATES: *Written Comments:* The public comment period on the proposal to revise critical habitat for the northern spotted owl is extended to July 6, 2012. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. If you are submitting your comments by hard copy, please mail them by July 6, 2012, to ensure that we receive them in time to give them full consideration.

Public Information Meetings: We will hold five public information meetings at the following locations and times:

- Redding, California, on June 4, 2012, from 3 p.m. to 5 p.m., and from 6 p.m. to 8 p.m.;
- Tacoma, Washington, on June 12, 2012, from 3 p.m. to 5 p.m., and from 6 p.m. to 8 p.m.;
- Portland, Oregon, on June 20, 2012, from 2 p.m. to 4 p.m. This meeting will precede the public hearing at the same location and on the same date.

Public Hearing: We will hold a public hearing in Portland, Oregon, on Wednesday, June 20, 2012, from 6 p.m. to 8 p.m.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS–R1–ES–2011–0112, which is the docket number for this rulemaking, and follow the directions for submitting a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2011–0112; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

(3) *At public information meetings or the public hearing:* Written comments will be accepted by Service personnel at any of the five scheduled public meetings or the public hearing. We will post all comments received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

Public Hearing: We will hold the public hearing in Room C-120 at the Oregon Convention Center, 777 NE Martin Luther King Blvd., Portland, Oregon; 503-235-7575.

Public Meetings: Public information meetings will be held at:

- University of Washington, Tacoma Campus, 1900 Commerce St., Jane Russell Commons, Tacoma, Washington; 253-692-4306;

- Redding Convention Center, 700 Auditorium Drive Redding, California 96001; 530-229-0036;
- Oregon Convention Center, Room C-120, 777 NE Martin Luther King Blvd., Portland, Oregon; 503-235-7575.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave, Suite 100, Portland, Oregon 97266; telephone 503-231-6179; facsimile 503-231-6195. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Publication of Proposal to Revise Critical Habitat

The U.S. Fish and Wildlife Service (Service) has proposed to revise the designated critical habitat for the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended (Act). The proposed rule was published in the **Federal Register** on March 8, 2012 (77 FR 14062), and is available online at www.regulations.gov and at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-08/pdf/2012-5042.pdf>. Consistent with the best scientific data available, the standards of the Act, and our regulations, we have initially identified, for public comment, approximately 13,962,449 acres (ac) (5,649,660 hectares (ha)) in

11 units and 63 subunits in California, Oregon, and Washington that meet the definition of critical habitat. In addition, the Act provides the Secretary with the discretion to exclude certain areas from the final designation after taking into consideration economic impacts, impacts on national security, and any other relevant impacts of specifying any particular area as critical habitat. We have identified, and are considering, a number of specific alternatives in this proposed rulemaking based on potential exclusions from the final rule. First, of the total area identified, we propose to exclude from the final designation approximately 2,631,736 ac (1,065,026 ha) of National Park lands, Federal Wilderness Areas, and other Congressionally reserved natural areas, as well as 164,776 ac (66,682 ha) of State Park lands. Second, we propose to exclude from a final designation approximately 936,816 ac (379,116 ha) of State and private lands that have a Habitat Conservation Plan, Safe Harbor Agreement, conservation easement, or similar conservation protection. And third, we are considering exclusion of an additional 838,344 ac (339,266 ha) of other non-Federal lands from the final designation.

These specific alternatives will be considered on an individual basis or in any combination thereof. In addition, the final designation may not be limited to these alternatives, but may also consider other exclusions as a result of continuing analysis of relevant considerations (scientific, economic, and other relevant factors, as required by the Act) and the public comment process. In particular, we solicit comments from the public on the physical and biological features currently identified in this proposal as being essential for the conservation of the species, whether all of the areas identified meet the definition of critical habitat, whether other areas would meet that definition, whether to make the specific exclusions we have proposed, and whether there are other areas that are appropriate for exclusion.

Forthcoming Publication of the Draft Economic Analysis and Draft Environmental Assessment

We are preparing an economic analysis to assess the economic impacts of the proposed critical habitat and related factors, as required in section 4(b)(2) of the Act. In addition, we are preparing, at our discretion, an environmental assessment under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* We anticipate announcing the availability of both of these documents in the Federal Register and on our website (<http://www.fws.gov/oregonfwo/>—click on the link “Spotted Owl Main Information Site”) on or about May 24, 2012. At that time we will seek public review and comment. Copies of the draft economic analysis and draft environmental assessment will be available for downloading from our website (<http://www.fws.gov/oregonfwo/>—click on the link “Spotted Owl Main Information Site”) or by contacting the Oregon Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). In addition, the draft economic analysis and draft environmental assessment will be available for downloading from the Internet at <http://www.regulations.gov> (see **ADDRESSES**, above). During the development of a final designation, we will consider economic and other relevant impacts, public comments, and other new information, as well as areas that may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Public Comment

We intend that any final action resulting from this proposed revised rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Specific information regarding:

- (a) The amount and distribution of northern spotted owl habitat;
- (b) What areas were occupied at the time of listing and contain features essential to the conservation of the species such that they should be included in the designation and why;
- (c) Whether these essential features may require special management considerations or protection and what special management considerations or protection may be needed in critical habitat areas we are proposing;
- (d) What areas not occupied at the time of listing are essential for the conservation of the species and why;
- (e) Whether we have identified any areas occupied at the time of listing, but that do not contain features essential to the conservation of the species, and that therefore should not be included in the designation; and
- (f) Whether we have identified any areas that may not have been occupied at the time of listing and that are not essential to the conservation of the species, such that they should not be included in the designation.

(2) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(3) Our proposed approach to effects determinations for the purposes of conducting consultation under section 7(a)(2) of the Act, in particular the application of a 500-ac (200-ha) scale as a screen for a determination of not likely to adversely affect, as described in the section “Determinations of Adverse Effects and Application of the “Adverse Modification” Standard.”

(4) Assistance in the identification of any private lands that are not expressly identified as intended for inclusion within critical habitat and that may have inadvertently been included within the designation, due to mapping and modeling limitations, as described in the section “Proposed Revised Critical Habitat Designation.”

(5) Information on the potential impacts of climate change on the northern spotted owl and proposed critical habitat, and whether special management needs or protections may be needed to address this issue in the critical habitat areas we are proposing.

(6) Any probable economic, national security, or other relevant impacts of designating any area as critical habitat, and in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts. We particularly request information and comments on what activities may occur and the effects to those activities in the proposed revised critical habitat areas. Such information could include:

- (a) The extent of possible activities, including temporal and spatial scale, relative to the critical habitat area within which they occur.
- (b) The impact of possible activities on the habitat’s likelihood of serving its intended conservation function or purpose.

(c) The consistency of possible activities with the intent of the Revised Recovery Plan for the Northern Spotted Owl or other landscape-level conservation plans.

(7) Whether the benefits of excluding the private and State lands with active conservation agreements (HCPs, SHAs, and other formal agreements) and Congressionally reserved natural areas (e.g., wilderness areas, national scenic areas, national parks) that are proposed for exclusion outweigh the benefits of including them in critical habitat.

(8) Whether the benefits of excluding any other particular area from critical habitat outweigh the benefits of including that area in critical habitat under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed revised critical habitat designation. We are considering the possible exclusion of non-Federal lands, especially areas in private ownership, in particular, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We, therefore, request specific information on:

- (a) The benefits of including any specific areas in the final designation and supporting rationale.
- (b) The benefits of excluding any specific areas from the final designation and supporting rationale.
- (c) Whether any specific exclusions may result in the extinction of the species and why.
- (d) For private lands in particular, we are interested in information regarding the potential benefits of including private lands in critical habitat versus the benefits of excluding such lands from critical habitat. This information does not need to include a detailed technical analysis of the potential effects of designated critical

habitat on private property. In weighing the potential benefits of exclusion versus inclusion of private lands, the Service may consider whether existing partnership agreements provide for the management of spotted owl habitat. We may consider, for example, the status of conservation efforts, the effectiveness of any conservation agreements to conserve the species, and the likelihood of the conservation agreement's future implementation. There may be broad public benefits of encouraging collaborative efforts and encouraging local and private conservation efforts, and these broad benefits are important considerations in our evaluation.

(9) Our process used for identifying those areas that meet the definition of critical habitat for the northern spotted owl, including the assumptions incorporated into the habitat modeling process, as described more fully in the section "Criteria Used to Identify Critical Habitat" and also in our supporting documentation (Dunk *et al.* 2012).

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Specific information on ways to improve the clarity of this rule as it pertains to completion of consultations under section 7 of the Act.

Our final determination concerning revised critical habitat for the northern spotted owl will take into consideration all written comments we receive during all comment periods, comments from peer reviewers, comments received during the public meetings, comments and

public testimony received during the public hearing, and any additional information we receive in response to the forthcoming notice of availability of the draft economic analysis and draft environmental assessment. The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. On the basis of peer reviewer and public comments, as well as any new information we may receive, we may, during the development of our final determination, find that areas within the proposed designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

If you previously submitted comments or information on this proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and will fully consider them in the preparation of our final determination.

You may submit your written comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Verbal testimony may also be presented during the public hearing (see **DATES** and **ADDRESSES** sections). We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you submit your comment via U.S. mail, you may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Information Meetings and Public Hearing

We are holding five public information meetings and one public hearing on the dates listed in the **DATES** section at the locations listed in the **ADDRESSES** section. We are holding the public hearing to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding the proposed critical habitat designation and the soon-to-be-released associated draft economic analysis and draft environmental assessment. A formal public hearing is not, however, an opportunity for dialogue with the Service or its contractors; it is only a forum for accepting formal verbal testimony. In contrast to the hearing, the public information meetings allow the public the opportunity to interact with Service staff and contractors, who will be available to provide information and address questions on the proposed rule and its associated assessments. We cannot accept verbal testimony at any of the public information meetings; verbal testimony can only be accepted at the public hearing. Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the

hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Persons with disabilities needing reasonable accommodations to participate in the public hearing or public meetings should contact Paul Henson, Field Supervisor, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Reasonable accommodation requests should be received at least 3 business days prior to the meeting or hearing to help ensure availability; at least 2 weeks prior notice is requested for American sign language or English as a second language interpreter needs.

Authors

The primary authors of this notice are the staff of the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 01 2012

Rachel Jacobson

Acting Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55-P

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